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# Wrongfully Convicted: The Overrepresentation of the Poor

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# Wrongfully Convicted: The Overrepresentation of the Poor

*Susan Rutberg\**

*Professor Susan Rutberg introduced a panel of her students who presented papers, each focused on an individual cause of wrongful convictions and a proposed solution to this identified problem. The panel illustrated how law school students can use the lens of their inexperience to articulate straightforward approaches that might reduce the circumstances that produce wrongful convictions and alleviate some of the hardship such convictions cause.*

Over the last twenty years, 255 wrongfully convicted people have been released from American prisons on the basis of indisputable scientific evidence.<sup>1</sup> For all these people, proof of the innocence they had long asserted was generated by DNA testing, often performed decades after their original convictions. For many, freedom came only after lengthy legal battles, sometimes decades long. These exonerations of innocent people, many of whom were robbed of significant portions of their lives, are largely due to the work of law students and lawyers working together in law school clinics. The Innocence Project originated at Cardozo Law School in New York City, founded by Peter Neufeld and Barry Scheck in 1992.<sup>2</sup> There are now Innocence Projects in every region of the United States and in Australia, Canada, England, and New Zealand as well.<sup>3</sup> In some ways, a new civil rights movement has been born. The stories of the wrongfully convicted have prompted a much-needed closer look at the criminal justice system, spearheading efforts at reform.

Golden Gate Law School was a part of the network of law school Innocence Projects for four years. From 2001 to 2005, the Golden Gate Innocence Project Clinic operated in partnership with Santa Clara University's Northern California Innocence Project. Working under the supervision of Golden Gate

professors, students investigated hundreds of cases. They read letters from prisoners, gathered appellate briefs and old case files, located and interviewed witnesses, and searched for evidence. The course, *Wrongful Convictions: Causes and Remedies*, originated as the companion seminar to the clinic.

Although our clinic closed for lack of funding in December 2005, the Wrongful Convictions seminar is still offered every fall.

Our clinic's finest hour was the case of Peter J. Rose, a man who had been convicted in 1995 of the kidnap and rape of a thirteen-year-old girl and sentenced to twenty-seven years in state prison. He had served nearly ten years before the clinic won a motion for DNA testing, the results of which eventually set him free in late 2004.<sup>4</sup> The clinic went on to win Rose's complete exoneration: he was declared factually innocent in 2005. Rose's case reads like a textbook for a course on the causes of wrongful convictions. The record is replete with police, prosecutorial, and defense attorney misconduct, including a coerced police interrogation of the young crime victim which led to false identification testimony; exculpatory laboratory evidence suppressed by the prosecutor; inaccurate pseudo-scientific testimony by the county criminalist; and most of all, pervasive incompetent defense lawyering. Despite all this malfeasance, Rose's convictions had been affirmed by the Court of Appeal and his subsequent writs denied.

If not for one piece of biological evidence that had miraculously escaped destruction, Rose would still be in prison today. The crucial evidence was a swab taken from the victim's clothing and sent to a Department of Justice laboratory for testing by the trial court prosecutor. The lab was unable to obtain a DNA profile at that time and the DOJ simply forgot to return the evidence to the prosecutor. Under then-California law, if the swab had been returned, it would have been destroyed along with all the other evidence in the case as soon as the appeals were finally decided.<sup>5</sup> A lab assistant's mistake made it possible for a man to prove his innocence. Peter Rose's freedom depended on persistent lawyering and pure luck.

Why do I teach about Wrongful Convictions? I came to full-time law teaching after nearly fifteen years of working in indigent criminal defense, first at a community-based poverty agency, the Bayview Hunters Point Community Defender,<sup>6</sup> then in Bay Area county public defender offices, an appellate defense agency, and, finally, through clinical teaching in partnership with indigent defense agencies at law schools in New York and in California.

These experiences of direct representation of poor people profoundly affected my perspective on justice. In the mid-1970s, I was a new staff attorney at the Bayview Hunters Point Community Defender, a tiny ramshackle law office in the heart of San Francisco's poorest African American community. With each new client interview, my sense of outrage grew. Each of them, nearly all

young African American men, told a similar story: harassment, humiliation, and often violence at the hands of the police. The stories differed only in the details. I learned vicariously what it meant to live “out here in minimum security,” as my clients called their neighborhood, in reference to the constant and very visible presence of police. My clients and their families feared being detained, arrested, hurt, or even killed not just for *driving* while black or brown, but for merely *existing* as a poor person of color in their own community. It was a full-immersion introduction to what we would now call issues of cultural competency.

Why should we teach our students about wrongful convictions? The DNA exonerations provide us with a supreme teachable moment: scientific proof that our criminal justice system makes mistakes, proof that guarantees of “minimum due process” are insufficient to protect against unjust results. In learning about the multiple factors that contribute to wrongful convictions, students develop a truly critical perspective about who gets arrested and convicted, and why. They begin to question whether there can be any truly “rightful” convictions under the present American system of justice, and are inspired to become the change agents that John Payton so eloquently encouraged us all to become in his keynote address to the Conference.<sup>7</sup>

When the stories of the DNA exonerations are told, the impression is often given that “new” evidence proved that the wrong person was convicted and now, “justice” has prevailed. Both concepts—“new evidence” and “justice”—in this context are misleading. The evidence is “new” only in that it hadn’t been brought to light before, but actually it was there all along. The only thing “new” about DNA evidence is that someone finally tested biological material left at the crime scene by the true perpetrator, and the test results excluded the person convicted of the crime. The meaning of “justice” can be debated, but surely the word cannot be used to apply to situations where innocent people have been deprived of their freedom for extended periods of time. Exonerations may put an end to *injustice* but do not create “justice.”

If we could be present at the time of each wrongfully convicted person’s arrest, and really listened to him, we would hear him saying, loud and clear: “Hey, I didn’t do it! You have the wrong man!” The DNA exonerations give us 255 examples of everything that is wrong with our system. Studying these cases reveals a persistent failure to listen on all levels of the criminal justice system: the police officer who makes an arrest on insufficient evidence; the detective who coerces a confession, or administers a suggestive photo lineup; the criminalist who “tests” the evidence to reach a foregone conclusion; the prosecutor who charges a case despite shaky eyewitness testimony; the overworked or cynical defense lawyer who doesn’t pay attention to his client. In each of these sit-

uations, if someone had been listening, free from the blinders of stereotypes and assumptions, the disaster of a wrongful conviction might have been averted. If someone with skills, passion, and persistence had been listening, maybe the story of innocence would have been heard. I teach about wrongful convictions in order to empower students to expose the problems with the status quo, with the way we do “justice” in America, and in the hope that my students will become lawyers who listen to the stories expressed by these too-often unheard voices and work to ensure that they are heard.

Why was no one listening to those claiming their innocence? Whose voices are heard in America? Lessons learned from my clients’ lived experiences have taught me that people who come from poor communities and communities of color can become so conditioned to disrespect institutions associated with the dominant culture that they may give up even expecting to be heard.

Popular misconceptions about DNA evidence abound: contrary to the conventional wisdom, DNA is not a scientific silver bullet that will make obsolete other forms of fact-finding within the criminal justice system. Why not? Because, in the vast majority of criminal cases, there is no DNA left at the scene of the crime.<sup>8</sup> Only in certain kinds of sexual assault cases and some other violent crimes is it likely that a perpetrator leaves biological evidence behind. In those relatively few cases, DNA testing can reliably exclude some people as suspects, and, if the evidence was material in the first place (for example, semen in a rape case) and has been properly preserved and subjected to appropriate forms of DNA testing, the results can prove beyond a shadow of a doubt that the person charged with or convicted of the crime is not guilty. When such evidence is produced after a defendant has been convicted and sentenced to prison, DNA provides the key that unlocks the cell door.

The so-called DNA revolution is not about DNA. In fact it is not about science at all. It is about the fallibility of the justice system. DNA provides us with an organizing tool: we can use the exonerations as proof positive that paying lip service to concepts of “minimal due process” isn’t enough to prevent miscarriages of justice. DNA exonerations provide a window into the workings of our deeply flawed system of justice. In the Wrongful Convictions seminar, we use the analogy that a wrongful conviction is a kind of death and examine the corpse of each wrongful conviction as if we were medical examiners. Under the microscope we look for the causes of each particular death. Oftentimes we find overlapping causes. Like an aging addict, the criminal justice system engages in multiple life-threatening behaviors that can result in competing diagnoses, often involving several terminal illnesses at once. When we undertake these autopsies we learn that the criminal justice system is vulnerable to the imperfections of the human beings who function as its decision makers: po-

lice officers, prosecutors, defense attorneys, trial judges, juries, and appellate courts.

## The Causes

Studies conducted by the Innocence Project show that by far the most prevalent single cause of wrongful conviction is **mistaken eyewitness identification testimony**. This factor is present in more than 75% of the cases.<sup>9</sup> Where does mistaken eyewitness testimony come from? Take one part fallible human memory, coupled with two parts of suggestive police procedures, sprinkle in a pinch of cross-racial unfamiliarity and voila, we have a recipe for an inaccurate identification. An inaccurate identification does not necessarily mean that a witness is lying or that a police officer has intentionally used a suggestive procedure, but whether intentional or merely fueled by a natural desire to help catch a criminal, a flawed identification procedure can be just as devastating.

**Lab error and “junk science”** played a role in more than 50% of the wrongful convictions.<sup>10</sup> More than half of these cases involve a misapplication of forensic disciplines—blood type testing, hair analysis, fingerprint analysis, bite marks, etc. have all played roles in convicting the innocent

**False confessions** and incriminating statements lead to wrongful convictions in approximately 25% of the cases.<sup>11</sup> In the false confession cases, 35% were either under 18 or developmentally disabled or both.<sup>12</sup> The Innocence Project supports encouraging all police departments to record custodial interrogations in their entirety to provide accurate records and prevent coercion. In recognition of the problems that can occur when interrogations are not memorialized audibly and visually, over 500 jurisdictions have adopted policies to record interrogations either voluntarily or because State Supreme Courts have so mandated.<sup>13</sup>

**False testimony on the part of government informants (which is a form of governmental misconduct)** is present in 15% of the convictions later proved wrong by DNA testing.<sup>14</sup> The Innocence Project recommends jury instructions warning that most snitch testimony is unreliable as it may be offered in return for deals, special treatment, or dropping of charges. Best practice to prevent this misconduct requires that all communications between informants and their law enforcement handlers be recorded.

And finally, shamefully, **incompetent lawyering** on the part of defense counsel is another major contributing cause of wrongful convictions, which runs throughout these cases.<sup>15</sup>

In our class, each time we study one of the causes, we also look at identifying remedies, ways to address the problems that give rise to the unaccept-

ably high number of wrongful convictions and see what we can do, as law students and lawyers, to actually make a difference.

In past years students in this seminar did research for and testified before a state Senate investigatory body, the California Commission on the Fair Administration of Justice (CCFAJ), whose recommendations for improving criminal justice in California were endorsed by our state legislature and then vetoed by our governor. Many of those reform bills were vetoed three years in a row and have now been pushed off the front burner by the economic crisis.<sup>16</sup>

This year the Wrongful Convictions seminar students did individual projects focusing on a cause or a remedy. They presented their findings at a “Teach-back” for the law school community. Empowering law school students to examine the criminal justice system with “fresh” eyes, or from the deeply felt experiences that they bring to law school as part of their personal or familial histories might lead to corrections that indeed change the dynamics within the criminal justice system. I offer three student examples of an identified problem that can impair the operation of the criminal justice system, sometimes leading to wrongful conviction, and their proposed solutions.

### ***Danielle VandenBos: Bridging the Gap: A Prisoners’ Guide on How to Better Communicate with Their Lawyers***

*This piece was originally written as a guide to be distributed to indigent defendants held in the San Francisco County jail. The intention of the guide is to inform prisoners about the criminal defense system, set realistic expectations, and improve communication with their court-appointed attorney.*

For indigent defendants who are appointed public defense, an understanding of the financial and practical hurdles his or her counsel encounters might mitigate frustrations some defendants experience when they do not hear back from counsel immediately. The Public Defender institution, as a whole, is painfully under-funded. For example, the San Francisco Public Defender’s Office represented over 28,000 indigent individuals in 2009,<sup>17</sup> employs 93 lawyers and 60 support staff, and operates on an annual budget of approximately \$24 million.<sup>18</sup> This figure barely affords counsel with adequate resources. The San Francisco Public Defender’s caseload is significantly higher than what the National Advisory Commission on Criminal Justice Standards and Goals recommends.<sup>19</sup>

Consequently, there will be times when an indigent defendant has a lot of interaction with the attorney, and other times when there is little communi-

cation. Public defenders must allot their time according to the needs of each case. While a lack of communication may be frustrating, it is important for clients to realize that their cases will receive greater attention when it is necessary.<sup>20</sup>

There are several affirmative steps that defendants can take in order to alleviate some of the pressures on their overworked attorneys.

During the first meeting with the attorney, a client should convey his or her willingness to fully cooperate and aid in the legal process. The client is the best source of information in helping the attorney diagnose, predict, and strategize elements of the case.<sup>21</sup> To best serve his or her client, an attorney cannot be blindsided. Thus, it is important that an attorney is fully informed of the circumstances of a case. A client should be detailed and precise in his or her recollection of events. In recalling details of the alleged crime, helpful tips for the client include: reinstating the context of the scene; recalling the events in different orders; changing the perspective of the crime; and including details such as time, place, and persons present for each occurrence.

As the case unfolds, the attorney will have a sense of the strength of the prosecution's case against his or her client. A client can continue to help the attorney build a case by anticipating what facts and inferences the prosecution may have against him or her<sup>22</sup> and evaluating the credibility of both sides' versions of key facts in dispute.<sup>23</sup>

Throughout the judicial process, it is important to remember that the attorney and client play distinct roles. Generally, the attorney controls all decisions affecting trial tactics and court proceedings.<sup>24</sup> The client does, however, retain the right to decide certain issues affecting his or her fundamental rights.<sup>25</sup> If a client feels the attorney is not fulfilling his or her duties and such action (or inaction) is adversely affecting the case, the client may bring these failings to the attention of the court.

In criminal proceedings, only a small percentage of cases actually go to trial, thus it is likely a client will be offered a plea agreement. The defendant has the right to accept or reject a plea agreement. An attorney can help his or her client make this decision by explaining the alternatives, advantages, and risks, but ultimately the decision must come from the client.

One of the primary benefits of pleading guilty is receiving a lighter sentence than if the case continues to trial.<sup>26</sup> A client will also gain peace of mind knowing what the sentence will be, rather than navigating the uncertainty of a trial.

On the other hand, pleading guilty can mean serving jail time, parole, and other collateral effects beyond a prison sentence.<sup>27</sup> Some parole requirements include, but are not limited to: a defined placement as to where one may legally reside; an implied consent to be searched with or without a warrant and with



or without cause; and, if applicable, requirements to register with local authorities (i.e., sex offender registration).<sup>28</sup> If any conditions are violated, a defendant can be sent back to prison. Some felony convictions can also limit one's eligibility for student loans<sup>29</sup> and certain public benefits. Thus, no matter how good the deal appears, it is important that the client is fully informed of all direct and collateral consequences of pleading guilty.

If a client determines that his or her attorney is not providing adequate representation, a few remedies are available. First, a client must establish whether the attorney is adversely affecting his or her case. If so, he or she must act immediately by filing a *Marsden* motion.<sup>30</sup> In the alternative, the client can file a grievance regarding the attorney's misconduct with the state bar.<sup>31</sup> While remedies for ineffective counsel exist, it is often difficult to prove. If a client is having doubts about the representation, by being open and honest with the attorney, he or she may find that those fears are unwarranted.

### ***Rachel Grainger: Jailhouse Informants, Wrongful Convictions, and Their Affect on Communities***

It is an undeniable reality that jailhouse informant testimony can be a cause of wrongful convictions. In Ellen Yaroshefsky's *Cooperation with Federal Prosecutors: Experiences of Truth Telling and Embellishment*, she discusses how many prosecutors told her that they could not tell whether an informant was telling the truth. Her work further revealed that 75% of those prosecutors believed that a proper investigation would produce a truthful result.<sup>32</sup> Peter Neufeld, co-director of the Innocence Project, found that jailhouse informants had been used in 20% of the cases in which a wrongful conviction was rendered.<sup>33</sup>

In addition to causing wrongful convictions, informant testimony has been shown to adversely affect inner-city communities. Residents in poor, minority communities have strongly criticized the use of jailhouse informants because of the likelihood of wrongful convictions of friends and family in their own communities. Social relationships are broken down as people are pressured to betray one another. This leads to increased suspicion between community members and undermines interpersonal bonds.<sup>34</sup> Furthermore, critics point out that jailhouse informant testimony rewards betrayal and selfishness at the expense of loyalty and sacrifice.

Compounding the problem is that jailhouse informants often are rewarded for their testimony, whether true or not, with agreements not to prosecute them for crimes or with reduced sentences. Repeat offenders will have their charges dropped or their subsequent crimes tolerated by law enforcement. The result is that some jailhouse informants will be released back into their own neigh-

borhoods, with the opportunity to inform on others based on personal grudges or a sense of misplaced power.<sup>35</sup>

## Seven Proposed Changes in the Use of Jailhouse Informants

**1. Maintain a central file on all jailhouse informants.** This will ensure that whenever an informant is caught in a lie, that lie will be documented and easily recalled the next time that informant is asked to provide testimony.<sup>36</sup>

**2. Require corroborating testimony for all jailhouse informants.** Requiring corroborating testimony would force prosecutors to look upon the initial statements of informants with a more skeptical eye and could potentially stop false testimony from ever being admitted before a judge.<sup>37</sup>

**3. Properly instruct juries on the nature of jailhouse informant testimony and its influence on procuring wrongful convictions.** Juries may be less likely to place too much faith on the veracity of jailhouse informant testimony if they are made aware of the complications associated with it.<sup>38</sup>

**4. Tape-record all contacts with jailhouse informants.** Hearing a recording could allow the jury to make a better determination as to the honesty of a jailhouse informant based on things like the informant's tone of voice, speed in answering questions, and inconsistent answers.<sup>39</sup>

**5. Utilize polygraphs or other lie detection technologies.** Could improve the way judges and prosecutors assess the reliability of jailhouse informant testimony in court—although the use of such technologies raises admissibility concerns.<sup>40</sup>

**6. Limit the rewards offered to jailhouse informants for their testimony.** Prosecutors are in a position to offer leniency, and in some cases money, to jailhouse informants in exchange for information and testimony favorable to the state. Unfortunately, these rewards motivate some people to lie.<sup>41</sup> Limiting the rewards available in exchange for testimony could potentially reduce the number of cases in which an innocent person is implicated in a crime by making perjury less appealing to aspiring informants.

**7. Prosecute jailhouse informants who are found to have given false testimony.** Informants who give false testimony are guilty of serious crimes and need to be held accountable.

### *Elisa Sapoff: Improving Resources for the Exonerated*

After spending years in prison for crimes they did not commit, the exonerated often re-enter society with nothing—yet the state that took away their

liberty provides few resources to assist them. Unlike parolees who were often guilty of the crimes for which they were convicted, exonerees are currently not entitled to government sponsored re-entry services. The battles that exonerees fought should end once they are released from prison; however, according to a 2005 study that looked at the lives of sixty of these wrongfully convicted men and women, half are living with family members, two-thirds are financially dependent, one-third have lost custody of their children, and at least one-quarter have suffered from post-traumatic stress disorder.<sup>42</sup>

The exonerated, like Herman Atkins, Sr. and Rick Walker, know first hand what the struggle is like to reclaim their lives. For Atkins, the biggest obstacle he faced after his release was getting a job. Because he had spent the main part of his life in prison he did not have a work history. This, coupled with a felony record that had not been expunged, made securing employment almost impossible.<sup>43</sup>

For Walker, the most difficult aspect of his post-exoneration life involved his interpersonal relationships. With his mind so focused on doing well and doing good things in life, he feared that other people not on the same track would stand in his way. His focus on improving his life immediately and trying to make up for all the time he lost left him with little patience for distractions, and ultimately hurt his ability to form lasting relations with others.<sup>44</sup>

Both men see illogic in a system that freely assists people who have actually committed crimes while turning its back on people who were wrongfully convicted. When the state is responsible for wrongful incarcerations of innocent people, it should be the state's responsibility to help these people re-enter society. In turn, they believe the state should offer mental and physical health care services, temporary housing, employment assistance, legal counsel, money for living expenses, and transportation. They believe these services, at a minimum, need to be made immediately available when the exonerated are first released.<sup>45</sup>

## Recommendations of Programs to Be Implemented by the State

**1. Mental and Physical Health Assistance:** Spending years in prison takes a toll on a person's mental and physical health.<sup>46</sup> Programs need to be implemented and funded by the state to address the health issues of exonerees.

**2. Employment Assistance:** After spending many years in prison, exonerees typically have little money when released, and often have either no employment record or a large gap in their employment history.<sup>47</sup> The Northern Cal-

ifornia Service League in San Francisco assists parolees in obtaining jobs, counseling services, and housing.<sup>48</sup> Similar assistance in obtaining employment is crucial for exonerees.

**3. Legal Assistance for Compensation/Expunging Record:** Being released is not the end to an exoneree's legal battles. As Herman Atkins' story tells us, exonerees often have to wage a long legal battle to get their convictions expunged and to win compensation from the state. Instead of exonerees having to search for their own lawyers, the state should appoint experienced counsel to represent wrongfully convicted people for any legal needs they may have as a result of their wrongful incarceration.<sup>49</sup>

**4. Housing:** A place to live is of utmost importance to most exonerees upon release. When a landlord does a background check, the exoneree's conviction and lack of rental history create problems.<sup>50</sup> Housing assistance from the state, similar to what is provided for parolees, would help alleviate this hardship.

## Notes

\* Susan Rutberg is Professor of Law, Golden Gate University. Professor Rutberg teaches Wrongful Convictions: Causes and Remedies and other courses. For its duration, from 2001–2005, she directed the Golden Gate Innocence Project. Professor Rutberg thanks Innocence Project and Wrongful Convictions students from 2001 to 2009 for their inspiration and Bridgid-Leigh Brady for her research assistance.

1. *Innocence Project Case Profiles*, INNOCENCE PROJECT, <http://www.innocenceproject.org/know/> (last visited July 12, 2010).

2. *About the Innocence Project*, INNOCENCE PROJECT, <http://www.innocenceproject.org/about/> (last visited July 12, 2010).

3. *See Other Projects Around the World*, INNOCENCE PROJECT, <http://www.innocenceproject.org/about/Other-Projects.php> (last visited July 14, 2010).

4. *See* Susan Rutberg, *Anatomy of a Miscarriage of Justice: The Wrongful Conviction of Peter J. Rose*, 37 GOLDEN GATE U. L. REV. 7, 21 (2006) (discussing the case of Peter J. Rose).

5. *See id.* at 19–21; *see also* CAL. PENAL CODE § 1417.9 (West 2003).

6. The Bayview Hunters' Point Foundation for Community Improvement, Inc., a non-profit community based human services agency, was founded in 1971 as part of former President Lyndon Johnson's federal anti-poverty campaign, known as the "Great Society." *About the Foundation*, BAYVIEW HUNTERS POINT FOUNDATION FOR COMMUNITY IMPROVEMENT, <http://bayviewci.org/whowere.html> (last visited July 14, 2010). The Community Defender, the legal services arm of the Foundation, provided free criminal defense to indigent community residents. From 1973 to 1978, I worked at the Community Defender, first as law clerk and then, after passing the Bar, as one of the staff attorneys.

7. Mr. Payton is President and Director-Counsel of the NAACP Legal Defense Fund. A video of his keynote address to the Poverty Law Conference, delivered on March 19, 2010, can be viewed at: [http://www.ggu.edu/school\\_of\\_law/academic\\_law\\_programs/jd\\_program/poverty\\_law](http://www.ggu.edu/school_of_law/academic_law_programs/jd_program/poverty_law). A version of that keynote appears as the opening essay of this volume.

8. INNOCENCE PROJECT, 250 EXONERATED, TOO MANY WRONGFULLY CONVICTED: AN INNOCENCE PROJECT REPORT ON THE FIRST 250 DNA EXONERATIONS IN THE U.S. 52, *available at* [http://www.innocenceproject.org/docs/InnocenceProject\\_250.pdf](http://www.innocenceproject.org/docs/InnocenceProject_250.pdf).

9. INNOCENCE PROJECT, REEVALUATING LINEUPS: WHY WITNESSES MAKE MISTAKES AND HOW TO REDUCE THE CHANCE OF A MISIDENTIFICATION 4, *available at* [http://www.innocenceproject.org/docs/Eyewitness\\_ID\\_Report.pdf](http://www.innocenceproject.org/docs/Eyewitness_ID_Report.pdf).

10. *Unvalidated or Improper Forensic*, INNOCENCE PROJECT, <http://www.innocenceproject.org/understand/Unreliable-Limited-Science.php> (last visited July 12, 2010).

11. INNOCENCE PROJECT, *supra* note 9, at 32–33.

12. *Id.* at 34.

13. *False Confessions & Mandatory Recording of Interrogations*, INNOCENCE PROJECT, <http://www.innocenceproject.org/fix/False-Confessions.php> (last visited July 15, 2010).

14. INNOCENCE PROJECT, *supra* note 10, at 4.

15. *See Bad Lawyering*, INNOCENCE PROJECT, <http://www.innocenceproject.org/understand/Bad-Lawyering.php> (last visited July 12, 2010).

16. *See* CALIFORNIA COMMISSION ON THE FAIR ADMINISTRATION OF JUSTICE, FINAL REPORT, *available at* <http://www.ccfa.org/documents/CCFAJFinalReport.pdf>.

17. SAN FRANCISCO PUB. DEF. OFF., 2010 ANNUAL REPORT AND CALENDAR (2010), *available at* <http://sfpublicdefender.org/files/2010/01/annualreport-lores-0107.pdf>.

18. *See* Leadership: San Francisco Public Defender Office, <http://sfpublicdefender.org/about/leadership/> (last visited July 25, 2010).

19. Ben Rosenfeld, Controller, to Sean R. Elsbernd, San Francisco Board of Supervisors (June 23, 2009), *available at* <http://www.sfcontroller.org/ftp/uploadedfiles/controller/reports/PublicDefMemo.pdf>.

20. If, however, a client feels that an irresolvable conflict exists with the attorney, he or she should contact the Public Defender's Office and speak with the supervising attorney.

21. STEFAN H. KRIEGER & RICHARD NEUMANN JR., *ESSENTIAL LAWYERING SKILLS: INTERVIEWING, COUNSELING, NEGOTIATION, AND PERSUASIVE FACT ANALYSIS* 31 (2007).

22. *Id.* at 212.

23. *Id.* at 214.

24. *Id.* This includes, but is not limited to, whether to call a particular witness, whether to introduce particular evidence, and whether to object to evidence. *See* *People v. Williams*, 2 Cal. 3d 894, 905 (1970); *People v. Lanphear*, 26 Cal. 3d 814, 830 (1980).

25. This includes, but is not limited to, whether to testify (*See, e.g., People v. Robles*, 2 Cal. 3d 205, 215(1970)), whether to enter an insanity plea (*See, e.g., People v. Guauze*, 15 Cal. 3d 709, 717 (1975)), whether to plead guilty (*See, e.g., People v. Rogers*, 56 Cal. 2d 301, 306 (1961)), and whether to demand a jury trial (*See, e.g., People v. Holmes*, 54 Cal. 2d 442, 443–44 (1960)).

26. PAUL BERGMAN & SARA J. BERMAN-BARRETT, *THE CRIMINAL LAW HANDBOOK: KNOW YOUR RIGHTS, SURVIVE THE SYSTEM* 442 (Richard Stim ed., 11th ed. 2009).

27. A guilty plea can result in deportation for an immigrant defendant and failure to forewarn a client as to this result is a violation of the Sixth Amendment right to effective assistance of counsel. *Padilla v. Kentucky*, \_\_U.S. \_\_, 130 S. Ct. 1473 (2010).

28. *See, e.g.,* Division of Adult Parole Operations (DAPO)—Parole Requirements, [http://www.cdcr.ca.gov/Parole/Parole\\_Requirements/index.html](http://www.cdcr.ca.gov/Parole/Parole_Requirements/index.html) (last visited July 23, 2010).

29. For example, to be eligible for Federal Student Aid, you cannot have a felony drug conviction.

30. This can be done verbally to the judge or in writing. Either way, the client should make it clear that he or she wants a new attorney. The judge will only grant the motion if he or she can show that 1) the lawyer is not providing adequate representation, or that a conflict exists between the client and lawyer and that ineffective representation is likely to result and 2) the only way to cure is with the appointment of a new lawyer.

31. For procedures and fees associated with filing a grievance with a state bar, visit the state bar's website. The State Bar of California—Filing a Complaint, <http://www.calbar.ca.gov/Attorneys/LawyerRegulation/FilingaComplaint.aspx> (last visited July 23, 2010).

32. Ellen Yaroshesky, *Cooperation with Federal Prosecutors: Experiences of Truth Telling and Embellishment*, 68 *FORDHAM L. REV.* 917 (1999).

33. Robert M. Bloom, *Jailhouse Informants*, 18 *Crim. Just.* 20 (2003–2004).

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40. AMERICAN BAR ASSOCIATION, *ACHIEVING JUSTICE: FREEING THE INNOCENT, CONVICTING THE GUILTY* (2006).

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